

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ELIZABETH BENAVIDES,

Plaintiff,

vs.

ASI LLOYDS

Defendant.

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CIVIL ACTION NO. 5:16-CV-217

DEFENDANT ASI LLOYDS' NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant ASI Lloyds ("ASI") hereby removes the action styled and numbered, *Elizabeth Benavides v. ASI Lloyds*, 2016CVF001540D2, currently pending in the 111th Judicial District Court of Webb County, Texas to the United States District Court for the Southern District of Texas, Laredo Division. For the reasons set forth below, removal of the state court action is proper under 28 U.S.C. §§ 1332, 1441, and 1446.

I. THE STATE COURT ACTION

1. On June 01, 2015, Elizabeth Benavides ("Benavides") filed her Original Petition in Cause No. 2016CVF001540D2 against ASI.

II. ASI'S NOTICE OF REMOVAL IS TIMELY

2. ASI was served with the Original Petition and citation on July 15, 2016. Accordingly, ASI files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b).

III. VENUE IS PROPER

3. Venue is proper in the United States District Court for the Southern District of Texas, Laredo Division, under 28 U.S.C. §§ 124(a)(5) and 1441(a) because this district and division embrace the place in which the removed action has been pending.

PARTIES

IV. BASIS FOR REMOVAL JURISDICTION

4. Removal of this action is proper under 28 U.S.C. § 1441 because it is a civil action brought in a state court and the federal courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332. Specifically, removal is proper because there is now, and was at the time this action was filed, complete diversity of citizenship between all Plaintiffs and all Defendants.

5. Benavides is a Texas resident who resides in Webb County, Texas.

6. ASI was at the time this lawsuit was filed, and at the date of this Notice remains, an association of underwriters. The individual underwriters are as follows: Tanya J. Fjare, Trevor C. Hillier, Kevin R. Milkey, John F. Auer, Jr., Edwin L. Cortez, Mary F. Fournet, Philip L. Brubaker, Pat McCrink, Jeff Hannon and Angel Bostick. Each of these underwriters is a citizen of the State of Florida. “The United States Supreme Court has consistently held for over one hundred years that the citizenship of an unincorporated association [such as ASI Lloyds] is determined . . . solely by the citizenship of its members.”¹ Therefore, ASI Lloyds is not a citizen of the State of Texas.

7. Accordingly, there is now, and was at the time this action was filed, complete diversity between all plaintiffs, Benavides, and all defendants, ASI.

V. AMOUNT IN CONTROVERSY

8. If it is facially apparent that Benavides’ claims exceed the jurisdictional amount, ASI’s burden is satisfied.²

¹ See *Massey v. State Farm Lloyds Ins. Co.*, 993 F. Supp. 568, 570 (S.D. Tex. 1998); see also *Gore v. Stenson*, 616 F. Supp. 895, 898-899 (S.D. Tex. 1984) (recognizing years of Supreme Court precedent reaffirming the treatment of unincorporated associations for jurisdictional purposes)

² *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1999).

9. In her Original Petition, Benavides seeks “monetary relief of more than \$100,000 but less than \$200,000.”³

10. Therefore, it is apparent that Benavides’ claims exceed the amount required to support federal jurisdiction.

VI. COMPLIANCE WITH LOCAL RULE 81

11. In accordance with 28 U.S.C. § 1446(a) and Rule 81 of the Local Rules of the Southern District of Texas, ASI files this Notice of Removal, accompanied by the following exhibits:

- a. All executed process in the case, attached hereto as **Exhibit A.**
- b. Plaintiffs’ Original Petition, attached hereto as **Exhibit B.**
- c. Defendant ASI’s Original Answer and Affirmative Defenses, attached hereto as **Exhibit C.**
- d. The state court docket sheet, attached hereto as **Exhibit D.**
- e. An index of matters being filed, attached hereto as **Exhibit E.**
- f. A list of all counsel of record, including addresses, telephone numbers, and parties represented, attached hereto as **Exhibit F.**

VII. JURY DEMAND

12. Benavides demanded a jury in the state court action.

VIII. CONCLUSION

13. ASI will promptly file a copy of this Notice of Removal with the clerk of the state court where the action is pending.

14. Therefore, ASI hereby provides notice that this action is duly removed.

³ See Plaintiff’s Original Petition, attached as Exhibit B, page 15, paragraph 70.

Respectfully submitted,

ZELLE LLP

By: /s/ Todd M. Tippet

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**ATTORNEYS FOR DEFENDANT
ASI LLOYDS**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Notice of Removal has been served this 5th day of August, 2016, by electronic filing as follows:

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/s/ Todd M. Tippet

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